

DOJ TOBACCO GRANT PROGRAM

2018-2019

GRANTEE HANDBOOK

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HANDBOOK FOR GRANTS MADE BY THE DEPARTMENT OF JUSTICE TO LOCAL AGENCIES UNDER PROPOSITION 56, THE HEALTHCARE, RESEARCH AND PREVENTION TOBACCO TAX ACT OF 2016 (THE ACT)

All items contained in this handbook are subject to change.

Eligibility

In accordance with the State Budget Act and Proposition 56, only local agencies within the State of California are eligible to receive funds. Local agencies that have authority to enforce tobacco-related state laws or local ordinances may apply, specifically including those that enforce state and local laws related to the illegal sales and marketing of tobacco products to minors, and those that perform investigative activities and compliance checks to reduce illegal sales of tobacco products to minors and youth.

Applications and Joint Applications

An eligible agency may submit one or more Applications.

An eligible agency may submit one or more Joint Applications.

An eligible agency may submit one or more Applications and one or more Joint Applications.

Joint Applications

A Joint Application shall include, in addition to other requirements set forth in the Request for Proposals, the following information:

- (1) Complete identification of all entities that are jointly applying for the Grant.
- (2) A designation of the primary applicant and of all secondary applicants.
- (3) A statement from the primary applicant indicating that the primary applicant agrees to assume responsibility for performance of the Projects in the event a Grant is made.
- (4) A statement from each secondary applicant identifying and acknowledging each responsibility that the secondary applicant shall assume in the event a Grant is made to the primary applicant.
- (5) A statement setting forth the benefits and disadvantages reasonably likely to arise from joint, as distinct from separate, performance of the Project.
- (6) A statement indicating whether any primary or secondary applicant is also submitting a separate Application or is a primary or secondary applicant in any other Joint Application, and briefly identifying such application(s).

Competitive Process

All Grants will be made on a competitive basis, unless otherwise specified in the Request for Proposals.

Administrative Review

- (a) Applications will undergo an Administrative Review by the Department to determine whether Application Requirements are satisfied, including but not limited to those of timeliness and completeness of the Application and of eligibility of the applicant, as set forth in the Request for Proposals and the Act.
- (b) Applications not meeting Application Requirements, and Applications received from ineligible entities, will be disqualified.
- (c) An applicant may appeal disqualification of its Application.
- (d) Applications received from applicants that meet the Eligibility Criteria and the Application Requirements will undergo a Merits Review.
- (e) Department staff shall submit the results of the Administrative Review to the Attorney General and/or his delegate.

Merits Review

- (a) Applications that satisfy the Administrative Review shall be reviewed by a merits review committee according to evaluation and scoring criteria set forth here and in the Request for Proposals.
- (b) The merits review committee shall provide its scoring and recommendations as to approval or denial of Applications, and as to the amount of funding for successful Applications, to the Attorney General and/or his delegate.

Evaluation Criteria for Merits Review

The Department shall award or deny Grants and funds based on an assessment as to the extent to which: (a) applicants and Projects proposed in Applications satisfy the criteria set forth in the Request for Proposals, and (b) the applicants show capacity to perform the proposed Projects, to comply with the Act's requirement to refrain from using Grant funds to Supplant any existing state or local funding of activities that have the same purposes as those of the Act, and to comply with the administrative requirements of the Grant, including those regarding submission of progress and final reports.

Recommendation for Funding

- (a) The merits review committee shall make a funding recommendation for each Application, other than those that were disqualified or denied, based on the following criteria:
 - (1) Amount of available funding.
 - (2) Amount of funding requested.
 - (3) The merits of the Application under the evaluation criteria set forth above and in the Request for Proposals.
 - (4) The Department's program, enforcement and research priorities, if any.
 - (5) Indicia of support for the Application from local stakeholders including, for example, tobacco control and prevention programs; public health, health and human services, or environmental health departments; local lead agencies; community or youth organizations; and local elected officials.
 - (6) Indicia of the likely benefits of the scale of operations.

- (7) Indicia that the funds granted will not be used to Supplant existing state or local funds used for the same purpose.
- (8) Other factors in accordance with grant program requirements.
- (b) Recommendations of Grant awards, denials, and funding, will be submitted to the Attorney General or designee for final approval.
- (c) Awards, denials and funding decisions by the Attorney General or designee are final and not subject to appeal.
- (d) An applicant may appeal a denial or a reduction in the amount awarded.

Award Notification

- (a) All applicants shall be notified of disqualification, denial, award, or other decision.
- (b) Notification of award does not authorize commencement of grant activities. Grant activities may not begin until a Grant Agreement between the Recipient and the Department is fully executed.

Grant Agreement

- (a) A written Grant Agreement is required for all Grants in the form of a Memorandum of Understanding.
- (b) The terms of the Grant Agreement include the Request for Proposals, the grant guidelines, and the Grantee Handbook.
- (c) At a minimum, a Grant Agreement will include the following:
 - (1) Name of the Recipient.
 - (2) Name of the Grant manager for the Recipient.
 - (3) Name of the authorizing official for the Recipient.
 - (4) Name of the fiscal or accounting official for the Recipient.
 - (5) A statement indicating assumption of responsibility for performance of the Project(s) in the event a Grant is made.

Joint Grant Agreement

- (a) A written Grant Agreement, in the form of a Memorandum of Understanding, is required for a Grant awarded to more than one local agency on the basis of a Joint Application.
- (b) A joint Grant Agreement will include, in addition to the items required for all Grant Agreements, the following:
 - (1) Name of the primary Recipient.
 - (2) Name of each secondary Recipient.
 - (3) The division of funds between each Recipient, if applicable.
 - (4) Name of the Grant manager for the primary Recipient.
 - (5) Name of the official contact for the Grant for each secondary Recipient.
 - (6) Name of the authorizing official for the primary Recipient.
 - (7) Name of the authorizing official for each secondary Recipient.
 - (8) Name of the fiscal or accounting official for the primary Recipient.

(9) Approved designation, between the primary and each secondary Recipient, of responsibilities for performance of the Grant.

(10) A statement from the primary Recipient indicating assumption of responsibility for performance of the Project(s) in the event a Grant is made.

(11) A statement from each secondary Recipient identifying and acknowledging each responsibility that the secondary Recipient shall assume in the event a Grant is awarded.

Prior Approval Required

Prior written approval by the Department is required for changes to an approved Project, Scope of Work, or budget. Failure to obtain prior written approval may result in the Department pursuing remedies for non-compliance.

Access

(a) Upon reasonable notice, Recipients shall allow the Department access to the records of the Grant or Project, the Project sites (if applicable), and any employees or contractors who may reasonably have information related to the Grant or Project.

(b) Upon reasonable notice, Recipients shall allow the Department or designee to accompany the Recipient on Grant-related activities.

(c) Upon request and within a reasonable notice, Recipients shall provide to the Department or designee requested information and writing relevant to the Grant or Project.

Performance Compliance and Responsibility

(a) Grants and funding are subject to performance compliance reviews in the form of Site Visits, interviews with Recipients, contractors and other stakeholders, and review of grant reports, progress reports, citations issued, adjudicatory records, Inspection Data, and other writings.

(b) The Recipient of a Grant is the responsible agency and may not transfer or assign the Grant to another entity without prior written authorization from the Department.

(c) Any liability arising from Grant-related activities shall be the responsibility of the Recipient. The State of California and the Department disclaim responsibility for any such liability.

Financial Compliance

Grants are subject to a financial compliance review in the form of an Audit, an agreed-upon-procedure, or both.

Reports

Progress reports, final reports, and Inspection Data shall be submitted to the Department in accordance with the reporting requirements set forth in the Grant Agreement.

Use of Program Income

Program income, if any, may be reinvested into the Project for which the Grant was awarded or returned to the Department, or the Department may approve other uses of program income in accordance with the general purposes of the Grant. Program income does not include fines, penalties, legal costs or attorney's fees collected as a result of enforcement actions by the Recipient.

Procurement of Goods or Services

- (a) The Recipient shall follow its own written procurement policies and procedures when procuring goods or services for activities relating to performance of the Grant, except where directed otherwise by the Department.
- (b) All documents related to the procurement of goods or services shall be maintained by the Recipient for the Records Retention Period and provided to the Department upon request.

Use of Contractors

- (a) Recipients may contract for services, either as set forth in the Grant Agreement or with prior written approval from the Department.
- (b) Contractor services must be for the purpose of achieving the Grant objectives, including but not limited to supporting front-line law enforcement peace officers.
- (c) Recipients are responsible for ensuring that each Contractor complies with Grant requirements, and the Grant Agreement, including, if applicable, collecting and reporting of Inspection Data.
- (d) Contracting out shall not affect the Recipient's overall responsibility for the management of the Project, and the Recipient shall reserve sufficient rights and control to enable it to fulfill its responsibilities for the Grant.
- (e) Recipients shall have a written agreement with each contractor.

Administrative Costs

A Recipient shall not use more than 5 percent of the funds received for Administrative Costs.

Program Costs

Program costs may include the reasonable and necessary cost of Tobacco Products purchased during Grant-related enforcement operations.

Records of Tobacco Products

Recipients shall maintain property records for Tobacco Products purchased or otherwise obtained during the course of performing a Project supported by a Grant, for the Records Retention Period. Recipients shall retain and preserve the Tobacco Products purchased or otherwise obtained during the course of performing a Project supported by a Grant, in accordance with the Recipient's written policies regarding retention, destruction or forfeiture of such items.

Travel

Travel costs are permitted for travel to/from DOJ-sponsored trainings, meetings, seminars, and/or workshops.

Meals, Incidentals, Lodging Expenses While Traveling

Expenses accrued under this section will be allowable for any approved training events listed above (see Travel). Grantees must utilize the travel forms (see Attachment 1) for reporting such expenditures for their Quarterly Report.

Equipment Property Records

Recipients shall maintain property records for Equipment purchased using a Grant, for the Records Retention Period.

Records Retention; Access

Recipients shall maintain records relating to the Application, Grant, Proposal, Grant Agreement, and performance of Projects, for the Records Retention Period.

Remedies for Noncompliance

The Department may take one or more of the following actions for failure by a Recipient to comply with the Act or Grant Agreement terms and conditions:

- (a) Withholding of payments.
- (b) Recovery of funds paid to the Recipient.
- (c) Imposition of additional conditions on the Recipient.
- (d) Termination of the Grant Agreement.
- (e) Disqualification from consideration for future Grants.

Closeout

The Department shall conduct closeout review activities prior to closing out each Grant. Closeout review activities include review of the final report to ensure it is sufficient and complete, verification that any performance issues are resolved, and verification that any Audit or agreed-upon-procedure findings are resolved.

Allowable Costs; Reasonable Costs; Allocable Costs

- (a) Costs must meet the following general criteria to be allowable:
 - (1) Must be reasonable for the performance of the Grant, and allocable to the Grant.
 - (2) Must be accorded consistent treatment. In the event a cost is assigned in one way and another cost incurred for the same purpose in like circumstances was previously allocated in another way, the Recipient shall provide a description of both the current and the prior assignments. The description shall be sufficient for the Department to ascertain whether or not funds have been Supplanted.
 - (3) Must be adequately documented.

- (4) Must be allowable under, or otherwise comply with, the Act and terms and conditions of the Grant Agreement.
- (5) Must be in compliance with applicable state and local laws.
- (b) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration will be given to:
 - (1) Whether the cost is generally recognized as ordinary and necessary for the proper and efficient performance of the Grant.
 - (2) The requirements of the grant program and the terms and conditions of the Grant Agreement.
 - (3) Market prices for comparable goods or services for the geographic area.
 - (4) Whether the Recipient deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase a cost.
- (c) A cost is allocable to the Grant if the cost is incurred for Grant-related activities.
- (d) Unless otherwise provided for in the Grant Agreement, if a cost is incurred for the performance of Grant-related activities and also for other non-Grant-related activities, and benefits both Grant and non-Grant activities, the proportion that is incurred for the performance of Grant-related activities may be approximated using reasonable and properly documented methods and assigned to the Grant.

Appeals

- (a) Actions that may be appealed include:
 - (1) Disqualification of an Application.
 - (2) Imposition of Additional Conditions.
 - (3) Suspension or Termination of a Grant Agreement.
 - (4) Delay of payment.
 - (5) Denial of an Application in whole or in part.
- (b) Appeals must be in writing, postmarked within 30 calendar days of the date of the notification of the action, and mailed or emailed to the Department at the address provided in the Request for Proposals.
- (c) An appeal shall include:
 - (1) A copy of the notification or other communication from the Department.
 - (2) The name of the applicant or Recipient, as applicable.
 - (3) The Grant Agreement, Application or other identification number, if applicable.
 - (4) The title of the Application or Grant Agreement.
 - (5) The reasons the action by the Department should not be imposed, including any documentation to support the appeal.
 - (6) The remedy sought by the appellant.
 - (7) Contact information for the appellant, in the event the Department seeks additional information.
 - (8) The signature of the authorized representative of the appellant.

- (d) Appeals not postmarked or electronically transmitted in a timely fashion will be denied.
- (e) The action or actions specified in the notification shall remain in effect while the appeal is under review.
- (f) Staff will review the appeal and submit a recommendation to the Attorney General or designee. The Attorney General or designee will make the final decision regarding the appeal.
- (g) The Department shall issue a decision on the appeal no later than 60 calendar days from the date the appeal is received, unless notice is provided in writing to the appellant that the decision will be issued at a later date.
- (h) A successful appeal may be remedied either during the course of the current funding cycle or in a subsequent funding cycle that may be during the course of the following fiscal year.

Definitions

The following definitions apply:

- (1) **Additional Conditions.** Conditions imposed based on past performance or an assessment of the potential risk for non-compliance with grant program requirements or grant agreement terms and conditions by an applicant or recipient.
- (2) **Administrative Costs.** Necessary and reasonable indirect expenses as allowed under the terms and conditions of the Grant Agreement.
- (3) **Administrative Review.** A review of an Application for completeness and eligibility.
- (4) **Allowable costs.** Costs incurred to further the objectives of the Grant that are allowable under the Act, the Grant's terms and conditions, the Request for Proposals, and these regulations. In the event of a conflict, the Grant's terms and conditions will take precedence.
- (5) **Application.** A formal request by a local agency to receive a Grant from the Department pursuant to Revenue and Tax Code Section 30130.57(e)(1).
- (6) **Application Requirements.** The elements of an Application that must be completed and the items which must be included, as set forth in a Request for Proposals.
- (7) **Audit.** A systematic and objective inspection, evaluation, and verification of a Recipient's accounts, financial management systems, and internal controls, conducted in accordance with the Generally Accepted Government Auditing Standards and Revenue and Tax Code, sections 30130.56 and 30130.57, subdivisions (e)(1), (f) & (g), designed to accomplish any one or more of the following: to monitor compliance with the requirements of the grant program and the terms and conditions of the Grant Agreement; to assess the quantity, quality, timeliness and cost of services the Recipient produces and delivers under the terms and conditions of the Grant Agreement; and to assess the performance of any contract entered into by a Recipient relating to a Grant. The same definition applies to each secondary recipient of a Grant under a Joint Application.
- (8) **Audit Finding.** A determination of compliance or non-compliance with the requirements of the grant program or the terms and conditions of the Grant, as a result of an Audit.

- (9) Closeout. The process by which the Department determines that all necessary administrative actions and all required Grant activities have been completed by a Recipient, and then closes a Grant.
- (10) Contractor. An entity or person, including a consultant, that enters into a contract with a Recipient to perform an activity.
- (11) Department. The California Department of Justice.
- (12) Disqualification. Removal of an Application from the application process due to one or more bases for disqualification as set forth in this Grantee Handbook or a Request for Proposals.
- (13) Eligibility Criteria. The minimum requirements an entity must meet to be eligible to apply for an award under a specific grant program.
- (14) Eligible. Possessing the minimum requirements for an entity to submit an Application and receive a Grant.
- (15) Equipment. Tangible personal property having a useful life of more than one year and a per-unit acquisition cost of \$1,000 or more.
- (16) Grant. An award of financial assistance made to a Recipient, the principal purpose of which is the transfer of funds to carry out a program or project of public benefit authorized and intended by Revenue and Taxation Code, section 30130.57, subdivision (e)(1), a Request for Proposals, and the Grant Agreement between the Recipient and the Department.
- (17) Grant Agreement. The final agreement entered into between the Department and a Recipient, or primary Recipient in the case of a Joint Application, which sets forth the terms and conditions of the Grant.
- (18) Grant Duration. Three years or as otherwise provided by a Request for Proposals or Grant Agreement.
- (19) Inspection Data. Information regarding inspection or enforcement activity by a Recipient under the terms of the Grant, including but not limited to information about retail violations, citations, communications, surveys and inspections. Inspection Data includes information regarding such activities whether or not a violation was found or a citation issued. A Grant Agreement may contain further information about what constitutes Inspection Data, how it is to be gathered and retained by a Recipient, and how it is to be reported to the Department.
- (20) Joint Application. A formal request to receive a Grant that is submitted by more than one local agency. A Joint Application includes a primary applicant and at least one secondary applicant.
- (21) Merits of the Proposal. The relation between the elements of an Application and the Evaluation Criteria as set forth in these regulations and, if applicable, the Request for Proposals.
- (22) Merits Review. Review of an Application by the Department to evaluate the Merits of the Proposal.
- (23) Minor: A person who is under the minimum age for sale of Tobacco Products as established by California law.
- (24) Performance Measure. An indicator used to assess how well a Project is achieving its desired objectives.

- (25) Project. An undertaking that is planned to conduct activities and achieve stated goals and objectives for which funds were awarded by the Department to a Recipient from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.
- (26) Proposal. A document that contains all necessary information to describe the project plans, objectives, outcomes, Performance Measures, Scope of Work, and budget of a proposed Project.
- (27) Recipient. A local agency to which a Grant is awarded. A Recipient includes a primary or a secondary Recipient as specified in a Grant Agreement arising from a Joint Application.
- (28) Records Retention Period. The period of time after the Grant is closed out that a Recipient must maintain records related to the Grant, which is three years.
- (29) Request for Proposals or RFP. A document requesting Applications, Proposals or submissions, and setting forth the requirements of a specific grant program, including but not limited to the application requirements.
- (30) Scope of Work. A detailed description of the work to be performed under a Grant. The Scope of Work typically includes a proposed or approved Proposal, and due dates for performance and reporting.
- (31) Site Visit. A visit to a project, inspection or enforcement activity site, or an alternative site such as a program or headquarters office, to evaluate project progress and monitor compliance with the terms and conditions of the Grant Agreement.
- (32) Supplant. Replace or reduce the amount of funds currently being appropriated for an existing program or activity because Grant funds are available or expected to be available to fund that same program or activity. The effect of supplanting would be to reduce the total amount that would have been available for the purpose stated in the Application or Grant Agreement.
- (33) Suspension. A temporary cessation of a Grant and grant project activities due to noncompliance with grant program requirements or Grant Agreement terms and conditions.
- (34) Termination. The ending of a Grant and grant project activities, in whole or in part, at any time prior to the specified end of the Grant Duration.
- (35) Tobacco Products. The same meaning as in Revenue & Taxation Code, section 30130.50, subdivision (b).
- (36) Unallowable Costs. Costs that are not allowable under the Grant Agreement, the Grantee Handbook, or state law.